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| IN THE MATTER OF | : | BEFORE THE |
| COLUMBIA PRESBYTERIAN | : | HOWARD COUNTY |
| CHURCH | : | BOARD OF APPEALS |
| Petitioner | : | HEARING EXAMINER |
| | : | BA Case No. 08-031C |

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DECISION AND ORDER

On July 28, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Columbia Presbyterian Church for conditional use approval to expand an existing religious facility in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.B of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Richard Talkin, Esquire, represented the Petitioner. Albert Edwards, Cliff Lockyer, and David Sheerer testified in favor of the petition. Stephen Rice, Donna Rice, Sujata Rana, Joe Guyton, Jesse Clay, Michael Backof, David Cowie, Sonja Cowie, and James Poole testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 6.6-acre, rectangular shaped subject property is located in the 5th Election District

140 feet east of Ten Mills Road and has a street address of 10001 Clarksville Pike (MD 108). It is referenced on Tax Map 30, Grid 8, as Parcel 223 (the "Property").

2. The Property is improved with a two-story brick religious facility (a church) situated about 340 south of Clarksville Pike and 37.7 feet from its east lot line. Behind the church is a one-story frame building, behind which are several small accessory buildings. To the one-story building's east are two portable classrooms approved in 2000 as an enlargement to the religious facility through BA 00-43E. A wide private driveway near the Property's northwest corner provides access. It runs about 750 feet to the south, parallel to the west lot line. The driveway branches off at several points to provide access to a parking lot to the church's front and side, two smaller lots, along the driveway, and a larger lot comprising much of the Property's rear section. A large stormwater management pond is situated in the Property's rear, southwestern section and a second one is situated to the east of the front parking lot.

3. Vicinal Properties. The properties to the east, west, and south are zoned NT (New Town). The property adjoining the northeast lot line and fronting on MD 108 is a wooded open space lot. The remaining adjoining properties are improved with single-family detached dwellings, whose rear and/or side yards adjoin the Property. The properties along the west lot line front on Ten Mills Road. Across Clarksville Pike, to the north, are Centennial Park and a residential lot improved with a single-family detached dwelling.

4. Roads. MD 108 in front of the Property has about 45± feet of paving within a variable right-of-way. MD 108 has one westbound lane, a right turn lane from westbound MD 108 to Centennial Park, and two eastbound lanes that merge into a single lane further east of the Property. The posted speed limit is 45 MPH.

5. The estimated sight distance from the existing driveway entrance is more than 800 feet to the west and 700 feet to the east. According to State Highway Administration data, the traffic volume on MD 108 west of Columbia Road was 23,444 ADT as of May 2006.

6. The Property is served by public water and sewer.

7. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts MD 108 as a Minor Arterial.

8. The Petitioner is proposing to expand the existing 16,700 square-foot facility with a 17,763 square-foot addition, a "classroom wing." The petition states the proposed addition would host religious activities primarily on evenings and weekends. The proposed addition would be 34 feet in height.

9. The Conditional Use Plan dated May 2008 depicts the footprint of the proposed addition. As shown on the Plan, this addition would be constructed around the existing building's northwest corner. The first level would be 8,598± square feet in area, the second 9,165± square feet. The Plan also depicts a large area identified as "Proposed Permissible Building Area." A proposed dumpster pad is depicted on the west side of the addition. The Plan also depicts a stormwater management facility in the northeast section of the Property. It also depicts a proposed expansion of the front parking lot (to the east of the existing lot.) Petitioner's Illustrative Plan denotes the removal of the parking area just to the west of the proposed addition (Petitioner's Exhibit 3).

10. Albert Edwards testified the proposed requested addition is for a classroom wing. Mr. Edwards also testified the church seating is not being enlarged because there are already 550 seats. He also stated the Petitioner installed buffering in the first phase and would install fencing

if the neighbors wanted it. Referring to Petitioner's Exhibit 3, Mr. Edwards testified the existing parking lot shown to the east of the proposed classroom wing would be eliminated and landscaped, which would eliminate car lights shining into the adjoining properties. The illumination from the parking lot would be shielded from adjoining properties. The rear SWM facility would be bermed to increase the storage area and the proposed plan would pipe the existing flows to a second facility in the front of the Property. It was his opinion these solutions would mitigate runoff onto adjoining properties. The tot lot would be continued. Children playing in the back section would respect neighboring properties. He also stated the residence is no longer used as such, contrary to the Technical Staff Report ("TSR").

11. Cliff Lockyer, an adjoining property owner, testified the use makes little noise and is a good neighbor.

12. Stephen Rice testified children playing outside of the existing religious facility create a lot of trash along the MD 108 driveway entrance to his family's property. Churchgoers also park on the family property and people dump items on the back lot. The classroom trailers look directly into his parents' kitchen, which caused them to enclose their deck for privacy. There is activity at the church every day and children play outside on the playground abutting their property.

13. Donna Rice, an adjoining property owner, testified people use their private (MD 108) driveway for parking, children leave trash on her driveway, and trash blows over onto her lot all the time. Children play basketball at night. She also was concerned that she did not know the capacity of the proposed classroom wing, how many persons would be using it on a given day, and how many children used the existing classrooms. She also wanted to know what facilities

would be included in the classroom expansion and was unsure if it would be used as a private school or include a kitchen. In response to questioning, she stated that other neighbors have easement rights to the private drive and that a pathway runs parallel to MD 108, crosses her driveway, and provides access for children from Running Brook. She was also concerned the proposed use would devalue area property values. Lastly, she testified that the use is not in harmony with the vision for Columbia.

14. Joe Guyton, an adjoining property owner, testified to experiencing serious runoff problems on his property and introduced into evidence several photographs (Opponents Exhibit 1 and 2) which show the erosion of his rear yard. He stated the stormwater pond often overflows, which causes the runoff and erosion problems. He also testified to children playing in the rear open field, make noise, and that headlights beam right into his porch.

15. Jesse Clay, an adjoining property owner, testified to being concerned about the "school" use of the existing and proposed facility. He was concerned the addition would carry through the problems of the existing classroom use.

16. Sujata Rana testified to bad drainage problems in the neighborhood and was concerned about whether the proposed addition was a church or school.

17. Michael Backof testified to being concerned about the school use of the classroom wing because it could create traffic problems on westbound MD 108, as parents waited to turn into the entrance. He expressed concern about not knowing the hours of operation and the ages of the children attending classes.

18. David Cowie testified to being concerned about the addition of a de facto school on the Property. He explained the church permits multiple educational groups to use the facility for a

donation. Consequently, there are now about 240 children regularly using the classrooms for home-schooling-related programs.

He was concerned the actual use would be something other than what was approved, as this may pose some additional risk to the community because there would be no limits on the absent specific information about the existing use and the expansion of that use. He also stated that at the meeting for the initial use, the Petitioner promised the community it would use the dwelling only as a residence, but it is now 440 feet of classroom space. In response to questioning, he opined the additional home-school use of the facility and the expanded classroom use would push the limits of the use in terms of negative impacts, such as runoff, noise, and traffic problems caused by motorists entering from the westbound lane of MD 108, which is already a hazardous situation.

19. Sonja Cowie testified to hearing children playing outside during the day and believes the school use of the Property would create more noise. She also stated the use was not in harmony with the original vision of Columbia.

20. James Poole testified to experiencing cars going around other cars waiting to make a left turn into the church. He is also concerned about traffic backup problems caused by persons picking up younger children because there is very little room in this area of Centennial Park.

21. Mr. Talkin stated the classroom trailers would be removed once the expansion was completed.

22. On recall, Mr. Edwards testified there are classrooms in the proposed addition. He stated the church does a lot of Sunday school teaching and that the classrooms were for church use. The home school and/or homestead groups would find another space if the church needed the space.

He said people petition the church to use the space for a broad range of uses, but there is no school with a headmaster.

23. In response to further questioning, he provided the following information. Next year 124 children from the Granite school (apparently a home school program) would meet for tutorials on Monday and Wednesday from 8:00 or 9:00 a.m. to 2:30 p.m. A second group, the Homesteaders, would meet at the church twice weekly and for longer hours. On Tuesday, 42 Homesteaders would attend during the day and on Fridays next year, 110 would attend. These home school groups teach tutorials in calculus, history and other subjects.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-20 zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

In this case, the Petitioner is proposing a 16,700 square-foot classroom addition to an existing 17,763 square-foot religious facility. The Howard County General Plan designates the area in which the Property is located as a "Residential" Land Use and MD 108 as a Minor Arterial. Religious facilities are presumptively compatible with residential land uses.

Nonetheless, and as is discussed in greater detail in Section I.B, I cannot assess the proposed addition's harmony with the General Plan because the record contains only the palimpsest of evidence about the proposed use and structure and the Petitioner has not adduced evidence that the addition as it will be used in fact was contemplated or addressed in the General Plan.¹ For this same reason, I am unable to determine whether the overall nature and intensity of the use on the site is appropriate, given the adequacy of proposed buffers and setbacks.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the *General Plan*, compatibility with the *neighborhood* is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed addition would have adverse effects in an R-20 zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-20 district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

¹ As a general rule, a conditional use is deemed compatible with the general or comprehensive plan when that plan is silent as to a specific use, but the rule necessarily falls by the wayside when, as here, the Hearing Authority is confronted by the silence of the plans.

For the reasons stated below, the Petitioner has failed to meet its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with the expansion of a religious facility in the R-20 district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The petition states the proposed expansion of the 16,700 square-foot facility with a 17,763 square-foot addition is for religious activities occurring primarily on evenings and weekends. In his testimony, the Petitioner's witness alluded to the daytime classroom use of the addition, but provided no specific information. For the most part, we know only the proposed structure's square footage, that it will have two stories or levels and will contain classrooms and be no more than 34 feet in height, and that there will be two stormwater management facilities, additional parking, and perhaps some perimeter fencing. The Petitioner has thus failed to provide certain applicable details of the proposed use necessary to the evaluation of the adverse impact standard, including information about indoor activities, hours of operation, and number of employees, despite the petition's requirement for such details. (Section 8, Summary of Request.) Additionally, unlike the many religious facilities or religious facility expansions approved as conditional uses by the Hearing Examiner in the last several years, including myself, the Petitioner did not introduce into evidence or attach to the petition any floor plans or elevations of the proposed wing, which would provide information about the nature of the type of indoor activities, as is required by the Conditional Use petition.

Moreover, the Petitioner provided no information about outdoor activities. However, the Conditional Use Plan and the Illustrative Plan (Petitioner's Exhibit 3) depict two areas adjacent to the exiting facility that are unexplained (the tan areas on the Illustrative Plan). While these may be simply stairs or some ornamental or entry feature, they may also be outdoor uses, like seating. The evidence also establishes the presence and intended future use of a tot lot next to the portable classrooms and the use of the rear parking area as a basketball practice area and playground; however, these are not shown on the Conditional Use Plan.² Without further information concerning these outdoor activities, I cannot assess their impact on vicinal properties.

Additionally, Mr. Talkin stated the Petitioner would remove the portable classrooms, but nowhere in the petition or the Conditional Use Plan is this statement supported. While it would appear their removal might lessen the impact of the proposed use, I cannot draw this conclusion absent sufficient information about the nature of the addition's indoor and outdoor activities.

The Petitioner proposed as a condition of approval the installation of fences along the lot lines of adjoining property owners, but it has not submitted a landscape plan specific to the proposed use. According to Mr. Edwards, this was unnecessary because the landscaping for the original facility suffices. Yet many of the homes along the west lot line were clearly visible when I visited the Site and several adjacent homeowners testified that car lights from the existing use beam directly into their homes and create noise. Consequently, I conclude the

² During my site visit, I observed two basketball hoops on the rear parking lot. No outdoor uses were approved through either BA Case No. 90-34E or 00-43E, which are part of the record. I note here that Section 7.c of the Conditional Use petition requires expansions and enlargements to provide case numbers and information regarding compliance with previous requirements and conditions.

Petitioner has not proven the noise, lighting, or other physical conditions generated by the proposed use will not be greater than that which is ordinarily associated with the expansion of a religious facility use in the district.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has not met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The record lacks any information about the physical appearance of the structure and there is no landscape plan, as the TSR observes. I am also concerned, as is the TSR, about the depiction on the Conditional Use Plan of the unexplained nature of the "Permissible Building Area."

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

According to the Petitioner's testimony, the religious facility currently has 550 seats. The required number of parking spaces for 550 seats is 184 and 263 parking spaces are provided. However, because the Petitioner has failed to provide sufficient information about the nature and use of the proposed addition, I conclude the Petitioner has not met its burden of demonstrating compliance with Section 131.B.2.c.

I specifically conclude the proposed location of the dumpster, which Mr. Edwards testified would be screened, will not be properly located to minimize adverse impacts on adjacent properties. As shown on the Conditional Use Plan, the dumpster will be located about 70 feet

from the west lot line, and the dumpster truck must reach this location via the driveway running parallel and very close to the homes along the west lot line. In my view, given the early morning hours of dumpster trucks and the noise attending dump trucks backing in and out of the loading area (including beeping) and with emptying out and replaced dumpsters, there are multiple alternative locations on of the Property where a dumpster could be located to minimize these impacts.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The record establishes good east and west sight distance. The Opposition testimony amply demonstrated the sole westbound Route 108 lane is already backed up when motorists wait to make a left hand turn into the driveway during peak hours. I conclude the Petitioner has not met its burden providing contravening evidence that the ingress and egress drives will provide safe access with adequate site distance for the proposed use.

II. Specific Criteria for Structures Use Primarily for Religious Activities (Section 131.N.39)

Structures used primarily for Religious Activities are permitted in the R-20 district subject to three requirements.

a. Lot coverage shall not exceed 25 percent of lot area.

The petition states the total coverage will be 23,190 square feet, or about 8% of the total lot area. This does not include the square footage of the portable classrooms, the classroom use of the residence, the outdoor uses, and the sheds on the Property and does not take into account the "Permissible Building Area" discussed above. I conclude the Petitioner has not demonstrated compliance with the requirement that the combined area of the use would be less than 25%.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

The petition states the maximum proposed height is 34 feet, which complies with the district's height requirement.

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:

- (1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.
- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs.
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.
- (4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

This criterion does not apply to the conditional use request.

III. Opposition Testimony

Much of the Opposition's testimony in this case concerned the Petitioner's alleged violation of the conditional uses approved in BA 90-34E, the original special exception (as it was then categorized) approved for the religious facility and BA 00-43E, the special exception approved for the portable classrooms. It is an improper exercise of the Board's and the Hearing Examiner's function to transform zoning application proceedings into a violation and enforcement process. For this reason, I may not deny the requested conditional use in this case

because the applicant has allegedly committed violations of the conditions of a previous permit.

Klein v. Colonial Pipeline Co., 55 Md. App. 324, 337, 462 A.2d 546, 554, 1983 (internal citations omitted).³

³ Section 102.B permits persons aggrieved by an alleged violation of the Zoning Regulations to request the Department of Planning and Zoning to issue a zoning violation notice. In addition, Section 131.L of the Zoning Regulations permits the Department to initiate action to revoke a conditional use.

ORDER

Based upon the foregoing, it is this **15th day of August 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Columbia Presbyterian Church to expand the 16,700 square-foot existing religious facility with a 17,763 square-foot addition as a conditional use in an R-20 (Residential: Single) Zoning District, is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed: 8/19/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.